

#1

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, SS

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO. 1975CV00027

SIASCONSET BEACH PRESERVATION  
FUND,

Plaintiff,

v.

ASHLEY ERISMAN, IAN GOLDING,  
ERNEST STEINAUER, DAVID  
LAFLEUR, JOSEPH TOPHAM,  
MAUREEN PHILLIPS, SETH  
ENGLEBOURG, as they are Members of  
the Nantucket Conservation Commission,  
and the Town of Nantucket,  
Defendants.

FILED

JUL 10 2019

NANTUCKET SUPERIOR COURT CLERK

COMPLAINT

The Siasconset Beach Preservation Fund (the "Plaintiff" or "SBPF") hereby appeals a denial Order of Conditions ("Denial OOC"), which the Town of Nantucket Conservation Commission (the "Commission") issued on June 20, 2019 under the Town of Nantucket Wetlands Protection Bylaw (the "Bylaw"). Attached hereto as Exhibit 1 is a copy of the Denial OOC. The Commission issued the OOC denying the Plaintiff's Notice of Intent ("NOI"), dated January 5, 2018, which sought permission to extend a geotextile tube system to the north and south from an existing length of geotubes on Baxter Road, Nantucket, which was initially allowed by the Commission as part of an existing project, pursuant to a September 20, 2015 OOC.



## **PARTIES**

1. The Plaintiff SBPF is a non-profit 501(3) organization formed by owners in the Siasconset neighborhood of Nantucket concerned about erosion of the Sankaty Bluff and the threat that it poses to their neighborhood. The Plaintiff's goal is to use an effective, environmentally sound, and economically feasible approach to addressing the erosion. SBPF has a mailing address of P.O. Box 2279, Nantucket, Massachusetts 02584.

2. The Defendant Nantucket Conservation Commission is the municipal authority responsible for reviewing and permitting activities concerning wetland resource areas under both the Massachusetts Wetlands Protection Act, M.G.L. c.131, §40 (the "WPA") and the Bylaw. The mailing address of the Commission is 2 Bathing Beach Road, Nantucket, Massachusetts 02443. This action is brought against the Commission and its members in their official capacities.

## **STATEMENT OF FACTS**

3. On or about January 5, 2018, on behalf of the Plaintiff, Epsilon Associates, Inc., in association with W.F. Baird & Associates, Ltd., filed a NOI with the Commission under the WPA and the Bylaw for the Proposed Baxter Road and Sconset Bluff Storm Damage Prevention Project, ("Proposed Project"), to extend the geotextile tube system to the north and south from the existing length of geotubes, which was initially allowed by the Commission when it issued an OOC on September 20, 2015 (SE 48-2824) ("Existing Project").

4. As described in more detail below, the Existing Project was the result of SBPF's original proposal to stabilize approximately 4,000 feet of eroding Coastal Bank from 63 to 119 Baxter Road. Through various appeals and decisions to provide some immediate protection for the most actively eroding reach of Coastal Bank, the 900 foot Existing Project was built. The purposes of the Existing Project and the Proposed Project are to: 1) complete the project originally sought by the SBPF, and 2) to provide storm damage protection for homes and other



associated infrastructure along the portion of Sconset Bluff that continues to actively erode. The new section of geotextile tubes would: 1) extend north from the Existing Project to protect three homes (109, 113, and 115 Baxter Road), which necessitates extending the geotube returns onto 117 Baxter Road; and 2) extend south to protect 13 homes between 59 and 85 Baxter Road. This comprises the "Full-Length Project."

5. The Commission issued an OOC ("Denial OOC") denying the Proposed Project on June 20, 2019 under both the WPA and the Bylaw.

6. The Commission determined that the Resource Areas subject to regulation are Land Under the Ocean, Coastal Beach, Coastal Dune, Coastal Bank, and Land Subject to Coastal Storm Flowage.

#### Existing Project Background

7. The Department of Environmental Protection (the "Department") approved the Existing Project by issuing an SOC on December 19, 2014 (SE48-2610). The Commission approved retaining the Existing Project and adding a fourth geotube tier when it issued an OOC on September 30, 2015 (SE48-2824). That OOC (SE48-2824) was not appealed. As is described in further detail herein, there is no significant difference between the Existing Project and the Proposed Project.

8. By way of a background, during the winter storms of 2012-2013, significant retreat (up to 20 to 30 feet or more) on portions of the Sconset Bluff occurred, leaving the top of the bluff less than 40 feet to the edge of Baxter Road in several areas, with many homes less than 25 feet from the top of the Coastal Bank. The Town of Nantucket (the "Town") and SBPF entered into a Memorandum of Understanding to support the permitting of a 4,000 foot-long rock revetment at the toe of the Coastal Bank extending from near the Lighthouse property to



mid-Baxter Road, and an NOI was filed with the Commission in July 2013. As the 2013-2014 winter storm season approached and the revetment NOI was still pending, SBPF and the Town jointly filed another NOI for 1,500 feet of geotextile tubes in October 2013.

9. On November 26, 2013, with the Commission review of the 1,500 foot geotube project NOI getting delayed, SBPF filed an Emergency Certification request for the same four tier geotextile tube system and related work proposed in the October 2013 NOI, but only for the most endangered 900 feet of the bluff, from 91-105 Baxter Road. The Commission denied this request on November 27, 2013. On appeal, the Department overturned the Commission's denial, approving the Emergency Certification on December 10, 2013.

10. On December 4, 2013, the Commission approved a separate Emergency Certification request filed by the Town for a variation on the October 2013 NOI that included two lower tiers of 45-foot circumference geotextile tubes topped by four upper tiers of smaller jute bags.

11. On December 17, 2013, SBPF and the Town jointly filed an Emergency Certification request with the Commission, which sought approval, on an emergency basis, for the four tier geotextile tube project described in the first request but modified by incorporating the conditions that the Department included in its December 10, 2013 Emergency Certification. On December 18, 2013, the Commission certified the emergency, allowing an emergency project consisting of three tiers of geotextile tubes along approximately 900 linear feet of Coastal Bank.

12. Each of the approved Emergency Certifications required that a NOI be filed to allow full review of the emergency project. On March 14, 2014, SBPF and the Town designated the October 2013 NOI for 1,500 feet of geotextile tubes as the required NOI. On April 25, 2014, SBPF and the Town amended the October 2013 NOI to reduce the length of the Existing Project



from 1,500 feet to 900 feet. The Commission denied this NOI in June 2014, which was appealed to the Department by SBPF. The Department then approved the Existing Project by issuing an SOC on December 19, 2014 (SE48-2610).

13. On January 5, 2015, the Commission appealed the SOC (SE48-2610) issued by the Department. With that appeal, the Department entered a stay on the SOC until issues relative to the Bylaw could be resolved. SBPF filed a subsequent NOI to authorize a geotube system.

14. The NOI was filed in August 2015 to retain the three tier geotube sytem along 87-105 Baxter Road, to add a fourth tier along lots 91, 93, 97 and 99 Baxter Road, and to install geotube returns. The September 2015 OOC (SE48-2824) was subsequently issued, authorizing the three tier geotube system to remain in place, and authoring the installation of the returns and a fourth tier in certain locations.

15. The Existing Project, which was approved by the Emergency Certification and re-authorized by the 2015 OOC, consists of three and four tiers of geotextile tubes, vegetation planting on the Coastal Bank above the sand template, and the installation of a stormwater runoff drainage system. The first phase of the Existing Project was constructed in late December 2013 and January 2014, and included the installation of three stacked tiers of 45-foot circumference of geotextile tubes at the base of the eroding Coastal Bank. This first phase of the Existing Project extended along approximately 852 feet at the toe of the Bank from 87-105 Baxter Road. The second phase of the Existing Project was constructed in October 2015 through February 2016, and included the installation of a fourth tier of geotextile tubes on Lots 91-99, intermediate returns, end returns, and a surface runoff drainage system. With the returns included, the total length of the Existing Project is 947 feet.



### Proposed Project Background

16. In its January 5, 2018 NOI filing, SBPF proposed to complete the Baxter Road and Sconset Bluff Storm Damage Prevention Project, which was initially agreed-upon and envisioned by the Town and SBPF in the July 2013 Memorandum of Understanding. The Proposed Project, which extends north and south from the Existing Project is proposed to provide storm damage protection for homes and associated infrastructure serving those homes along the portion of the Sconset Bluff that continues to actively erode.

17. The proposed section of geotextile tubes will extend north from the Existing Project to 117 Baxter Road to protect three pre-1978 homes (109, 113 and 115 Baxter Road), and it will extend south from the Existing Project to 59 Baxter Road to protect 13 pre-1978 homes (inclusive of returns), thereby providing continuous protection from 59 through 115 Baxter Road. The length of the Proposed Project is 2,683 feet, with 767 feet to the north of the Existing Project and 1,916 feet south of the Existing Project. In order to provide protection from a 100-year storm, four tiers of geotextile tubes are proposed to provide continuous protection for the entire length of Sconset Bluff that is vulnerable to erosion and storm damage. The face of the Coastal Bank will be vegetated using American beachgrass and other native vegetation where needed to help stabilize the face of the Coastal Bank and to prevent surface erosion.

18. The final plans submitted to the Commission were reduced in length from the design submitted with the NOI in January 2018 so as to limit the Proposed Project to protecting only existing pre-1978 homes, plus extending protection between the Existing Project and the pre-1978 homes to the north and south to protect infrastructure related to the pre-1978 homes and to prevent a gap in the Coastal Bank stabilization project.



19. The OOC also denied the Project pursuant to the WPA. The Plaintiffs requested a Superseding Order of Conditions from the Department on July 2, 2019.

**The Commission's Issuance of the Denial OOC for the Proposed Project is Inconsistent with its Prior Approval of the Existing Project**

20. As stated, the Commission issued an OOC for the Existing Project on September 30, 2015. The 2015 OOC approved the ongoing maintenance of the three (3) tiered system of sand-filled geotubes (permitted by the Emergency Certification) along 87-105 Baxter Road, the installation of smaller geotextile tubes as returns at the end of the structure, planting of vegetation, and sand mitigation and nourishment. The OOC, in Finding No. 12, stated that "[t]he Commission finds that the Project is proposed to protect pre-1978 buildings and essential public infrastructure providing access and utilities for such." The Commission, in Finding No. 14, found that "these dwellings and infrastructure are in danger, due to erosion of the coastal bank."

21. The Existing Project and the Proposed Project are essentially the same. For example, both projects include the protection of Baxter Road and the installed public utilities in the county way, as they both front vacant lots, and the protection of the Coastal Bank along those lots is essential to protecting public infrastructure. Further, both the geotube projects have the same essential design. Both projects further have robust sand template management that includes placing sand on template at a rate of 22 cy/lf/yr as an "on-site" sand stockpile to recover exposed tubes after erosion events. Moreover, both projects as conditioned and now proposed include an extensive monitoring program, including but not limited to monitoring of shoreline change and bathymetric surveys.



**Proposed Project's Compliance with the Nantucket Wetlands Protection Regulation's**  
**("Nantucket Regulations") Performance Standards**

**Land Under the Ocean, Nantucket Regulations, Section 2.01**

22. The Proposed Project will not adversely affect Land Under the Ocean ("LUO") because there is no work proposed in that Resource Area.

23. The Proposed Project complies with Section 2.01(B)(7), which provides that

"No new bulkheads or coastal engineering structures shall be permitted to protect structures constructed or substantially improved after 8/78. Bulkheads may be rebuilt only if the Commission determines that there is no environmentally better way to control an erosion problem, including in appropriate cases the moving of the threatened building. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure built prior to 9/78, but not substantially improved, from imminent danger."

24. The Proposed Project complies with Section 2.01(B)(7) because it is designed to preserve an entire historic, largely pre-1978 community, which includes mainly pre-1978 homes.

25. The Proposed Project further complies with Section 2.01(B)(8) because as a water dependent project, it will have no adverse effects on wildlife, erosion control, marine fisheries, shellfish beds, storm damage prevention, flood control and recreation. The Project will not adversely affect wildlife as the bank vegetation will be restored. It will have a positive effect on erosion control as it will protect the Bank from wave-induced erosion and sand mitigation will be added to contribute to the natural sand supply into the littoral drift system. Further, no Project activities will occur seaward of Mean High Water and so it will not affect fisheries or shellfish beds. Storm damage prevention and flood control will benefit from the Project since it will protect the Coastal Bank. Sand mitigation will be provided and shoreline monitoring conducted to ensure that adjacent and downdrift beaches are not impacted. The Project will also not adversely impact recreational uses as public access will be maintained in front of or on top of the geotextile tubes.



to prevent modification.

**Coastal Beach, Nantucket Regulations, Section 2.02**

26. The Proposed Project will not adversely affect Coastal Beach because it complies with Nantucket Regulations Section 2.02(B)(2), which is identical to Section 2.01(B)(7), for the same reasons.

27. The Proposed Project further complies with Nantucket Regulations Section 2.02(B)(4) regarding clean fill because sand mitigation will consist of placing clean, beach-compatible sand into the littoral system, and the Project does not involve the placement of sand on any tidal flats.

28. The Project complies with Nantucket Regulations Section 2.02(B)(9) because the Project has been designed using the best available measures to stabilize the Coastal Bank and protect existing landward structures and public infrastructure while simultaneously avoiding, minimizing, and mitigating for potential impacts.

**Coastal Dune, Nantucket Regulations, Section 2.03**

29. The Project will not adversely affect Coastal Dune because it will be built southward to a point north of the existing Coastal Dune, and SBPF is committed to avoiding the alteration of Coastal Dune.

**Coastal Bank, Nantucket Regulations, Section 2.05**

30. The Proposed Project will not adversely affect the Coastal Bank.

31. The Project complies with Nantucket Regulation Section 2.05(B)(1), which is the prohibition of coastal engineering structures, for the same reasons as described above regarding compliance with Section 2.01(B)(7). Specifically, the Project is designed to protect a largely pre-78 community, which includes mostly pre-78 homes as well as pre-78 structures to which various alterations have been made. Many houses have already been moved, others have little



room to move, and the Town voted for the Existing Project, recognizing that infrastructure is in imminent danger and should be protected in place. The Memorandum of Understanding entered into in July 2013 by the Town and SBPF specifically recognized that "certain private homes located on or near Siasconset Bluff and Baxter Road, a public way, may be imminently threatened with damage and/or loss and destruction due to severe erosion of the bluff" and as stated previously, specifically planned for up to 4,000 feet of a coastal engineering structures in the areas, including those of the Existing and Proposed Project.

32. Bank recession is progressing and many homes have been forced to move off of their lots or lost due to erosion. An analysis of Bank retreat prepared for the Existing Project documented that single-season Bank recession rates could be as high as 40-feet, based on measured Bank recession from 2012-2013. The homes and infrastructure in the Project area are all in imminent danger because they could be destroyed if another season or two of significant Bank erosion occurs.

33. SBPF performed an Alternative Analysis, which demonstrated that no other alternative is feasible to satisfy the Project objectives.

34. The Project further complies with Nantucket Regulations Section 2.05(B)(3) because it will not adversely affect Bank height, Bank stability, wildlife habitat, vegetation, wetland scenic view, or the use of the Bank as a sediment source.

35. The Project will preserve rather than adversely affect the Bank height and is designed to maintain Bank stability by protecting the lower Bank from wave-induced erosion. Vegetation plantings on the upper Bank face will also prevent rain and wind-induced erosion. The Project will not adversely affect wildlife habitat or vegetation because Bank vegetation will be restored, and there will be the planting of beach grass and other native vegetation on the Bank



face. Further, the geotextile tubes with the sand cover and associated vegetation will have wetland scenic views similar to the Bank appearance before erosion occurred. The Project provides sand mitigation and includes the monitoring of adjacent and downdrift beaches, and thus will not adversely affect sediment sources.

**Land Subject to Coastal Storm Flowage, Nantucket Regulations, Section 2.10**

36. The Proposed Project will not adversely affect Land Subject to Coastal Storm Flowage ("LSCSF").

37. The Project complies with Nantucket Regulations Section 2.10(B)(1) because it will not reduce the ability of LSCSF to absorb and contain flood waters. The Project will stabilize the Bank face and provide protection to the toe of the Bank, and enhance the Bank's function of buffering inland areas and buildings from storm damage.

38. The Project further complies with Nantucket Regulations Section 2.10(B)(5) because the Project has been designed using best available measures to stabilize the Coastal Bank and existing landward structures while avoiding, minimizing, and mitigating for potential impacts.

**COUNT I**  
**(M.G.L. c.249, §4)**  
**(Nantucket Conservation Commission)**

39. The Plaintiff hereby repeats and incorporates by reference all allegations set forth in Paragraphs 1 through 38 as if set forth herein.

40. The Proposed Project as proposed complies with any and all requirements set forth by the Bylaw.

41. The Denial OOC contains no Findings or other legitimate justifications that could properly amount to a Denial of the Plaintiff's Proposed Project under the Bylaw.



42. The Commission, through the issuance of a Denial OOC, denied the Proposed Project yet failed to identify any legitimate adverse impacts on involved Resource Areas noted on the Denial OOC.

43. The Plaintiff challenges the Denial of the Proposed Project on the grounds that the Commission's denial is arbitrary and capricious, is wholly without support in the Administrative Record, and rests upon misinterpretations and allegations that have no relevance under the Bylaw and/or are factually and technically unfounded.

44. The Commission's denial of the Proposed Project (as proposed through the NOD) has resulted in substantial injury and manifest injustice to the Plaintiff.

**COUNT II**  
**M.G.L. c.231A, §§1 and 2 - Declaratory Judgment**  
**(Nantucket Conservation Commission)**

45. The Plaintiff hereby repeats and incorporates by reference the allegations contained in Paragraphs 1 through 44 above as if fully set forth herein.

46. The Commission's denial rests upon misinterpretations and allegations that have no relevance under the Bylaw and are technically and factually unfounded. Based on the proposed design and construction methods, the Project will not adversely affect any protected interest of the Bylaw or Resources Areas protected thereunder.

47. An actual controversy exists between the parties.

48. All necessary parties are joined for the purposes of adjudicating the controversy.

49. The Plaintiff has exhausted its administrative remedies.

50. The Plaintiff's Proposed Project fully complies with any and all performance standards under the Bylaw.

51. Thus, the Plaintiff seeks a declaration from this Court that:



- to prevent modification.
- a. The Commission's June 20, 2019 Denial OOC is unenforceable as applied to the Plaintiff's Proposed Project, and that the Denial OOC is null and void;
  - b. The Commission's June 20, 2019 Denial OOC has resulted in substantial injury and manifest injustice to the Plaintiff; and
  - c. The Commission's decision to issue the June 20, 2019 Denial OOC was arbitrary and capricious, and therefore must be declared invalid.


**PRAYERS FOR RELIEF**

**WHEREFORE**, the Plaintiff requests that this Court:

- a) Grant certiorari review pursuant to M.G.L. c.249, §4;
- b) Enter declaratory judgment pursuant to M.G.L. c.231A, §§1 and 2;
- c) Enter an Order annulling the Commission's June 20, 2019 Denial of Order of Conditions and find that the Plaintiff's Proposed Project complies with the Nantucket Wetlands Protection Bylaw;
- d) Enter an Order requiring the Commission to issue a Positive Order of Conditions under the Bylaw for the Proposed Project;
- e) Enter judgment in their favor on all counts listed herein; and
- f) Award such other and further relief as this Court deems just.



Respectfully Submitted,  
**SIASCONSET BEACH  
PRESERVATION FUND,**  
Plaintiff,  
By its Attorneys,



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Glenn A. Wood, BBO #547421  
Michele A. Hunton, BBO #667766  
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Boston, MA 02109  
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mhunton@rubinrudman.com

Dated: July 9, 2019





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:  
SE48-3115  
MassDEP File #

eDEP Transaction #  
Nantucket  
City/Town

**A. General Information**

1. From: Nantucket  
Conservation Commission
2. This issuance is for  
(check one): a. ☒ Order of Conditions b. ☐ Amended Order of Conditions

3. To: Applicant:

Josh Posner  
a. First Name b. Last Name

Siasconset Beach Preservation Fund (SBPF)  
c. Organization

P.O. Box 2279  
d. Mailing Address

Nantucket MA 02584  
e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

See Attached Property Owners (Town of Nantucket and Property Owners 59-119 Baxter Rd)  
a. First Name b. Last Name

See Attached list  
c. Organization

See Attached list  
d. Mailing Address

See Attached list MA 02584  
e. City/Town f. State g. Zip Code

5. Project Location:

59-119 Baxter Road (plus returns) See Attached List Nantucket  
a. Street Address b. City/Town

See Attached list See Attached list  
c. Assessors Map/Plot Number d. Parcel/Lot Number

Latitude and Longitude, if known: See Attached list See Attached list  
d. Latitude e. Longitude





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 - Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
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Provided by MassDEP:  
SE48-3115

MassDEP File #

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Nantucket

City/Town

**A. General Information (cont.)**

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

Nantucket

a. County

See Attached List

b. Certificate Number (if registered land)

c. Book

d. Page

7. Dates: 01/06/2018

a. Date Notice of Intent Filed

05/20/2019

b. Date Public Hearing Closed

06/20/2019

c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

Expanded Baxter Road and Sconset Bluff Storm Damage Prevention Project Permit Drawings (6 sheets)

a. Plan Title

Baird W.F. Baird & Associates Ltd.

Gordon G. Thomson, P.E.

b. Prepared By

c. Signed and Stamped by

05-15-2019

N/A

d. Final Revision Date

e. Scale

f. Additional Plan or Document Title

g. Date

**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

- a. ☐ Public Water Supply    b. ☒ Land Containing Shellfish    c. ☒ Prevention of Pollution  
d. ☐ Private Water Supply    e. ☒ Fisheries    f. ☒ Protection of Wildlife Habitat  
g. ☐ Groundwater Supply    h. ☒ Storm Damage Prevention    i. ☒ Flood Control  
j. ☒ Wetland Scenic Views (bylaw)    k. ☒ Recreation (Bylaw)

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a. ☐ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

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Provided by MassDEP:  
SE46-3115

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**B. Findings (cont.)**

Denied because:

- b. ☒ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. A description of the performance standards which the proposed work cannot meet is attached to this Order.
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).
3. ☐ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a)            a. linear feet

**Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)**

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	<u>          </u> a. linear feet	<u>          </u> b. linear feet	<u>          </u> c. linear feet	<u>          </u> d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	<u>          </u> a. square feet	<u>          </u> b. square	<u>          </u> c. square feet	<u>          </u> d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	<u>          </u> a. square feet <u>          </u> e. cu dredged	<u>          </u> b. square <u>          </u> f. cu	<u>          </u> c. square feet	<u>          </u> d. square feet
7. <input type="checkbox"/> Bordering Land Subject to Flooding	<u>          </u> a. square feet	<u>          </u> b. square	<u>          </u> c. square feet	<u>          </u> d. square feet
Cubic Feet Flood Storage	<u>          </u> a. cubic feet	<u>          </u> f. cubic feet	<u>          </u> g. cubic feet	<u>          </u> h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	<u>          </u> a. square feet	<u>          </u> b. square		
Cubic Feet Flood Storage	<u>          </u> c. cubic feet	<u>          </u> d. cubic feet	<u>          </u> e. cubic feet	<u>          </u> f. cubic feet
9. <input type="checkbox"/> Riverfront Area	<u>          </u> a. total sq. feet	<u>          </u> b. total sq.		
50 ft within 100 ft	<u>          </u> c. square feet	<u>          </u> d. square	<u>          </u> e. square feet	<u>          </u> f. square feet
80 ft between 100-200 ft	<u>          </u> g. square feet	<u>          </u> h. square	<u>          </u> i. square feet	<u>          </u> j. square feet





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 - Order of Conditions**

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Provided by MassDEP:  
SE48-3116

MassDEP File #

eDEP Transaction #

Nantucket

City/Town

**B. Findings (cont.)**

**Coastal Resource Area Impacts:** Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square		
	c. cu dredged	d. cu		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. cu yd nourishment	d. cu yd nourishment
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square	c. cu yd nourishment	d. cu yd nourishment
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square		
	c. cu dredged	d. cu		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or Inland Land Under Waterbodies and Waterways, above			
	a. cu dredged	b. cu		
21. <input checked="" type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square		





**Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands**

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Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:  
SE48-3115

MassDEP File #

MassDEP Transaction #

Nantucket

City/Town

**B. Findings (cont.)**

22. ☐ Restoration/Enhancement \*:

a. square feet of BVW

b. square feet of salt marsh

23. ☐ Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

**C. General Conditions Under Massachusetts Wetlands Protection Act**

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. the work is a maintenance dredging project as provided for in the Act; or
  - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on 06/17/22 unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 - Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:

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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,  
"Massachusetts Department of Environmental Protection" (or, "MassDEP")  
"File Number" SE48-3115
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.





Massachusetts Department of Environmental Protection  
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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

**NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS**

19. The work associated with this Order (the "Project") is (1) ☐ is not (2) ☒ subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.

b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:

- i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
- ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
- iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
- iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
- v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.





Massachusetts Department of Environmental Protection  
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**WPA Form 5 - Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(a)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following: i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.





Massachusetts Department of Environmental Protection  
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**WPA Form 5 - Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
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Provided by MassDEP:

SE48-3116

MassDEP File #

eDEP Transaction #

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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

g) The responsible party shall:

1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.

h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.

i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.

j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.

k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.

l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

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Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 - Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:

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**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

1. Is a municipal wetlands bylaw or ordinance applicable? ☒ Yes ☐ No
2. The Nantucket Conservation Commission hereby finds (check one that applies):
- a. ☐ that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw

2. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b. ☐ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

1. Municipal Ordinance or Bylaw

2. Citation

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

Please view additional findings and conditions page(s)



# **DENIAL**

Massachusetts Wetlands Protection Act (MGL Chapter 131, Section 40)  
Town of Nantucket Wetlands Bylaw (Chapter 136)

**Address:** 59-119 Baxter Road and  
**Assessor's Map and Parcels:** See attached list  
**Property Owner:** Town of Nantucket/see attached list  
**Applicant:** Siasconset Beach Preservation Fund, Inc. (SBPF)  
**DBP File Number:** SE48-3115  
**Filing Date:** January 5, 2018  
**Date Hearing Closed:** May 20, 2019  
**Date Orders Issued:** June 17, 2019  
**Plan of Record Information:** Expanded Baxter Road and Sconset Bluff Storm Damage Prevention Project Permit Drawings (6 sheets), dated 2019-01-10, final revision 2019-05-15 and stamped by Gordon G. Thomson, P.E.

## **Permit Overview:**

This order denies a permit to construct and maintain a four tier geotube system and returns with sand nourishment, and the replanting of the bank face on a Coastal Bank, Coastal Beach, Coastal Dune and Land Subject to Coastal Storm Flowage.

## **Project Proposal:**

The Order of Conditions is based on information submitted in the Notice of Intent dated January 5, 2018, its attachments and the plan of record, "Expanded Baxter Road and Sconset Bluff Storm Damage Prevention Project Permit Drawings (6 sheets), dated 2019-01-10, final revision of 2019-05-15 and stamped by Gordon G. Thompson, P.E. The Commission also considered and relied upon testimony at public hearings and other pertinent supplemental information including and not limited to:

- 9-12-2018 Memo from Ian Golding
- Sconset Bluff Images provided by Ian Golding
- Sand samples dated 3-16-18 from Ian Golding
- 9-27-2018 Letter from the Nantucket Land Council
- 9-27-2018 Letter from the Nantucket Coastal Conservancy
- 9-28-2018 Letter from Applied Coastal
- 10-30-2018 Comments from the Nantucket Land Council and Applied Coastal
- 11-02-2018 Letter from Epsilon Associates
- Work Logs from January-March 2018 provided by SBPF
- 11-5-2018 Letter from Epsilon Associates
- 11-19-2018 Letter from Nantucket Coastal Conservancy
- 11-30-2018 Letter from SBPF
- 11-30-2018 Letter from Nantucket Coastal Conservancy
- 11-30-2018 Letter from Applied Coastal
- 12-03-2018 Letter from SBPF
- 12-03-2018 Letter from Nantucket Coastal Conservancy
- 12-3-2018 Letter from Judith Wegner
- 1-15-2019 Revised Project Plans from SBPF

Siasconset Beach Preservation Fund, SE48-3115; 59-119 Baxter Road



- 2-1-2019 Materials from Ian Golding
- 2-1-2019 Review of project from Greg Berman
- 2-7-2019 Letter from SBPF
- 2-8-2019 Letter from Peter Kellner
- 2-11-2019 Letter from Quiddnet Squam Association
- 2-11-2019 Two letters from SBPF
- 2-11-2019 Letter from Nantucket Land Council
- 2-11-2019 Letter from Dirk Roggeveen
- 2-8-2019 Updated Project Plans from SBPF
- 3-1-2019 Determination from Massachusetts Natural Heritage and Endangered Species Program
- 3-4-2019 Letter from Nantucket Coastal Conservancy
- 3-4-2019 Letter from SBPF
- 3-6-2019 Letter from Nantucket Coastal Conservancy
- 3-6-2019 Letter from Applied Coastal
- 3-8-2019 Two Letters from SBPF
- 3-8-2019 Letter from Judith Wegner
- 3-11-2019 Letter from Nantucket Coastal Conservancy
- 3-11-2019 Comments from Judith Wegner
- Jim O'Connell Letter from 11-4-2013 submitted
- Superseding Order of Conditions SE48-2610 dated December 19, 2014
- 3-11-2019 Letter from SBPF
- 3-18-2019 Letter from Nantucket Coastal Conservancy
- 3-25-2019 Letter from Epsilon Associates
- 4-22-2019 Comments from Barbara Bund
- 4-22-2019 Comment from Nantucket Coastal Conservancy
- 4-23-2019 Comments from Nantucket Coastal Conservancy
- 4-22-2019 Comments from SBPF
- 4-25-2019 Letter from Kopelman and Paige (Town Counsel)
- 5-1-2019 Comments from Nantucket Coastal Conservancy
- 5-14-2019 Letter from Epsilon Associates
- 5-14-2019 Letter from SBPF
- 5-15-2019 Revised Project Plans from SBPF
- 5-16-2019 Letter from Applied Coastal
- 5-16-2019 Letter from Nantucket Land Council
- 5-20-2019 Letter from SBPF

**Findings:**

1. The Commission finds that areas subject to regulation are land under the ocean coastal beach, coastal dune, coastal bank, land subject to coastal storm flowage and their associated buffer zones.
2. The Commission finds that the property is partially located within Priority Habitat of Rare Species or Estimated Habitat of Rare Wildlife as defined by the Massachusetts Natural Heritage and Endangered Species Program.
3. The Commission finds that the geotube system is a coastal engineering structure.



**The following findings pertain to the Commonwealth of Massachusetts Wetlands Protection Act (MGL Chapter 131 Section 40)**

4. The Commission finds that land under the ocean is determined to be significant to the protection of marine fisheries, protection of wildlife habitat, storm damage prevention and flood control.
5. The Commission finds that coastal beach is determined to be significant to storm damage prevention, flood control and protection of wildlife habitat.
6. The Commission finds that the coastal dune is significant to storm damage prevention, flood control and the protection of wildlife habitat.
7. The commission finds that the coastal bank is determined to be significant to storm damage prevention and flood control because it supplies sediment to the coastal beach.
8. The Commission finds that the coastal bank is determined to be significant to storm damage prevention and flood control because it is a vertical buffer to storm waters.
9. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.25 (5) that projects not included in 310 CMR 10.25(3) or 10.25 (4) which affect nearshore areas of land under the ocean shall not cause adverse effects by altering the bottom topography so as to increase storm damage or erosion of coastal beaches, coastal banks, coastal dunes, or salt marshes.
10. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.25 (6) that projects not included in 310 CMR 10.25(3) which affect land under the ocean shall if water-dependent be designed and constructed, using best available measures, so as to minimize adverse effects, and if non-water-dependent, have no adverse effects, on marine fisheries habitat or wildlife habitat caused by: (a) alterations in water circulation; (c) alterations in the distribution of sediment grain size; (d) changes in water quality, including, but not limited to, other than natural fluctuations in the level of dissolved oxygen, temperature or turbidity, or the addition of pollutants.
11. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.27 (3) that any project on a coastal beach, except any project permitted under 310 CMR 10.30 (3)(a), shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.
12. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.28 (3) that any alteration of, or structure on, a coastal dune or within 100 feet of a coastal dune shall not have an adverse effect on the coastal dune by:
  - a. Affecting the ability of waves to remove sand from the dune;
  - b. Disturbing the vegetative cover so as to destabilize the dune;
  - c. Causing any modification of the dune form that would increase the potential for storm or flood damage;
  - d. Interfering with the landward or lateral movement of the dune;
  - e. Causing removal of the sand from the dune artificially; or
  - f. Interfering with mapped or otherwise identified nesting habitat
13. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (3) that no new bulkhead,



revetment, seawall, groin or other coastal engineering structure shall be permitted on such a coastal bank except that such a coastal engineering structure shall be permitted when required to prevent storm damage to buildings constructed prior to the effective date of 310 CMR 10.21 through 10.37 (August 10, 1978), including reconstructions of such buildings subsequent to the effective date of 310 CMR 10.21 through 10.37, provided that the following requirements are met:

- a. A coastal engineering structure or a modification thereto shall be designed and constructed as to minimize, using best available measures, adverse effects on adjacent or nearby coastal beaches due to changes in wave action, and
  - b. The applicant demonstrates that no method of protecting the building other than the proposed coastal engineering structure is feasible.
  - c. Protective planting designed to reduce erosion may be permitted.
14. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (4) that any project on a coastal bank or within 100 feet landward of the top of a coastal bank, other than a structure permitted by 310 CMR 10.30(3), shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.
15. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (6) that any project on such a coastal bank or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.
16. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (7) that bulkheads, revetments, seawalls, groins or other coastal engineering structures may be permitted on such a coastal bank except when such bank is significant to storm damage prevention or flood control because it supplies sediment to coastal beaches, coastal dunes and barrier beaches.

The following findings pertain to the Town of Nantucket Wetlands Protection Bylaw (Chapter 136)

17. The Commission finds that the coastal beach is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, fisheries, shellfish, wildlife, recreation and wetland scenic views.
18. The Commission finds that the coastal dune is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, prevention of pollution, wildlife, and wetland scenic views.
19. The Commission finds that the coastal bank is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, wildlife, and wetland scenic views.
20. The Commission finds that land subject to coastal storm flowage is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, water quality, erosion and sediment control, and wildlife.
21. Pursuant to Section 2.02B(1) of the Nantucket Wetlands Protection Regulations the provisions of Section 2.01B(1-8)(Land Under the Ocean) shall apply to coastal beaches and tidal flats. Therefore the Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.01B(7) that no new bulkheads or coastal engineering structures shall be permitted to



protect structures constructed or substantially improved after 8/78. Bulkheads may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including in appropriate cases the moving of the threatened building. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure built prior to 9/78, but not substantially improved, from imminent danger.

22. Pursuant to Section 2.02B(1) of the Nantucket Wetlands Protection Regulations the provisions of Section 2.01B(1-8)(Land Under the Ocean) shall apply to coastal beaches and tidal flats. Therefore the Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.01B(8) that water dependent projects shall be designed and performed so as to cause no adverse effects on wildlife, erosion control, marine fisheries, shellfish beds, storm damage prevention, flood control and recreation.
23. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.02B(2) that new bulkheads or coastal engineering structures shall be permitted to protect structures constructed, or substantially improved, after 8/78. Bulkheads may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including in appropriate cases the moving of the threatened building. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure built prior to 9/78, but not substantially improved, from imminent danger.
24. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.02B(4) that clean fill of compatible grain size may be used on a Coastal Beach but not on a Tidal Flat, only if the Commission authorizes its use, and only if such fill is to be used for a beach or dune nourishment project. All possible mitigation measures shall be taken, as determined by the Commission, to limit the adverse effects of the fill.
25. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.03(B)(1) that no coastal revetments or coastal engineering structure of any type shall be constructed, rebuilt or repaired.
26. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.03(B)(3) that no excavation or disturbance of vegetative cover shall be allowed on a coastal dune unless the area is completely restored, replanted and stabilized to its original form and volume.
27. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.03(B)(4) that fill may be used only if the Commission authorizes its use and only if such fill is to be used for beach and dune nourishment projects.
28. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.03(B)(6) that any activity allowed on a coastal dune or within 100 feet of a coastal dune shall be restricted to such activity that is determined by the Commission not to have any adverse effect on the dune by altering the ability of wind or waves to remove sand from or deposit sand on a dune; by disturbing vegetative cover in a manner sufficient to destabilize the dune; by causing any modification of the dune form and slope which would increase the potential for erosion, storm flood damage; by



interfering with landward or lateral movement of the dune; or by causing the rate of sand removal to increase through man-made means or structures.

29. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.05B(1) that new bulkheads or coastal engineering structures shall be permitted to protect structures constructed, or substantially improved, after 8/78 except for public infrastructures. Bulkheads and groins may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including in appropriate cases the moving of the threatened buildings and/or public infrastructure. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure that has not been substantially improved or public infrastructure built prior to 9/78, from imminent danger.
30. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.05B(3) that all projects shall be restricted to an activity as determined by the Commission to have no adverse effect on bank height, bank stability, wildlife habitat, vegetation, wetland scenic view or the use of a bank as a sediment source.
31. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.10B(1) that the work shall not reduce the ability of the land to absorb and contain flood waters, or to buffer inland areas from flooding and wave damage.

Therefore, based on the referenced findings, the Nantucket Conservation Commission **DENIES** the project SE48-3115 for the Siasconset Beach Preservation Fund at 59-119 Baxter Road pursuant to the Massachusetts Wetlands Protection Act (MGL Chapter 131§40), Massachusetts Wetlands Protection Regulations (310CMR 10.00), the Town of Nantucket Wetlands Protection Bylaw (Chapter 136) and the Town of Nantucket Wetlands Protection Regulations. The Commission finds that the given information, historical site conditions and current site conditions that no conditions can be set for the project as proposed that would adequately protect the wetland resources and wetland interests protected by the Massachusetts Wetlands Protection Act and the Town of Nantucket Wetlands Protection Bylaw. Further the Commission finds that the applicant has not met the burden of proof required for the Nantucket Conservation Commission to grant a permit.



modification.

## Record &amp; Assessed Owners: 59-119 Baxter Road - 2018

Property Address	Map & Parcel	Record Title Holder	Assessed Owner	Recording Information
59 Baxter Road	48-20	Kesh F. Dale, Trustee of 59 Casapiche Nominee Trust	Kesh F. Dale, Trustee of 59 Casapiche Nominee Trust	C16072
61 Baxter Road	48-21	Ann R. Hesley, Trustee of the Mayflower OPRT	Ann R. Hesley, Trustee of the Mayflower OPRT	1335277
63 Baxter Road	48-22	Elizabeth Singer, Trustee of the 64 Baxter Road Realty Trust	Elizabeth Singer, Trustee of the 64 Baxter Road Realty Trust	C16644
65 Baxter Road	48-23	Thomas Tuttle & Shannika Tuttle	Thomas Tuttle & Shannika Tuttle	1330102
67 Baxter Road	48-24	Morning Light LLC, Margaret Heast manager	Morning Light LLC, Margaret Heast manager	849269
69 Baxter Road	48-25	Richard & Marianne L. Woodick	Richard & Marianne L. Woodick	1334117
71 Baxter Road	48-26.1	John C. Marston and Carol Burewicz	John C. Marston and Carol Burewicz	C21251
73 Baxter Road	48-27	Christian M. Darby	Christian M. Darby	1316010
75 Baxter Road	48-28	Sankaty Bluff Group, LLC, John E. Osborn and Deborah P. Osborn manager	Sankaty Bluff Group, LLC, John E. Osborn and Deborah P. Osborn manager	115278
77 Baxter Road	48-29	Joshua Posner and Eileen Rudden	Joshua C. Posner and Eileen M. Rudden	C17838
79 Baxter Road	48-30	Helmut F. Weymar & Caroline S. Weymar	F. Helmut Weymar & Caroline S. Weymar	C12804
81 Baxter Road	48-31	William D. & Deborah Fuller Cohen	William D. & Deborah Fuller Cohen	C23689
83 Baxter Road	48-34	Marie Desbaillet and Richard Touchette	Marie Desbaillet and Richard Touchette	C23896
85 Baxter Road	48-35	Glascoet Preservation Fund, Inc. - Joshua Posner President	Glascoet Preservation Fund, Inc. - Joshua Posner President	C26095
87 Baxter Road	48-8	Samuel Furrow & Ann Furrow	Samuel Furrow & Ann Furrow	836293
91 Baxter Road	48-32	Daniel L. Korngold, Trustee of D&M Baxter Road Nominee Trust	Daniel L. Korngold, Trustee of D&M Baxter Road Nominee Trust	136246
93 Baxter Road	48-21	Steven T. & Erin P. Freeman	Steven T. & Erin P. Freeman	106897
97 Baxter Road	48-18	Lawrence C. & Margaret McQuade	Lawrence C. & Margaret McQuade	C17587
99 Baxter Road	48-18	Ann B. Furrow	Ann B. Furrow	C20681
101 Baxter Road	48-17	101 Baxter Road LLC, James E. Walker and Deborah C. Walker managers	101 Baxter Road LLC, James E. Walker and Deborah C. Walker managers	214270341
105 Baxter Road	48-15	Marilee B. Madson, as Trustee of Marilee Brill Madson Nominee Trust	Marilee B. Madson, as Trustee of Marilee Brill Madson Nominee Trust	C25889
107 Baxter Road	48-14.1	Whitney A. Gifford, Trustee of S.G. Nominee Trust	Hannah J. Gritz, Trustee of S.G. Nominee Trust	21390217
107A Baxter Road	48-14	Whitney A. Gifford, Trustee of S.G. Nominee Trust	Whitney A. Gifford, Trustee of S.G. Nominee Trust	647191
109 Baxter Road	48-12	Justine Mascoli Kanner, Trustee of Frederick P. Mascoli Living Trust	Justine Mascoli Kanner, Trustee of Frederick P. Mascoli Living Trust	C52158
113 Baxter Road	48-11	Loretta Yoder and Kyle L. Lashaw	Loretta Yoder and Kyle L. Lashaw	925147
115 Baxter Rd	48-13	115 Baxter LLC, John Khawari manager	115 Baxter LLC, John Khawari manager	1613035
117 Baxter Rd	48-9	Stephen B. Cohen	Stephen B. Cohen	575163
119 Baxter Rd	48-7	Sancoet Trust, Inc. - Elliot Gervitz President	Sancoet Trust, Inc. - Elliot Gervitz President	C16218
Sancoet Bluff	48-9	Town of Northcutt	Town of Northcutt	103119
Sancoet Bluff	48-6	Town of Northcutt	Town of Northcutt	18562
Sancoet Bluff	48-6	Town of Northcutt	Town of Northcutt	C1702
Sancoet Bluff	48-5	Sancoet Trust, Inc. - Elliot Gervitz President	Sancoet Trust, Inc. - Elliot Gervitz President	





**Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands**

**WPA Form 5 - Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:  
SE48-3116

MassDEP File #

sDEP Transaction #

Nantucket

City/Town

**E. Signatures**

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

06/25/2019

1. Date of Issuance

7

2. Number of Signers

Signatures:

*Andrew Bennett*  
Andrew Bennett (C)

*Ashley Erlsman*  
Ashley Erlsman (VC)

*Ernie Steinhauer*  
Ernie Steinhauer

*David La Fleur*  
David La Fleur

*Ian Golding*  
Ian Golding

*Ben Champoux*  
Ben Champoux

*Joseph Topham*  
Joseph Topham

☒ by hand delivery on

06/17/2019 06/29/19  
Date

☐ by certified mail, return receipt requested, on

Date

**F. Appeals**

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request of Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 - Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:  
SE48-3116  
MassDEP File #

MassDEP Transaction #  
Nantucket  
City/Town

**G. Recording Information**

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

Project Location

MassDEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant



## CIVIL ACTION COVER SHEET

DOCKET NUMBER

1975CV00027

Trial Court of Massachusetts  
The Superior Court

PLAINTIFF(S): Siasconset Beach Preservation Fund

ADDRESS: P.O. Box 2279

Nantucket, MA 02584

DEFENDANT(S): Ashley Erisman, Ian Golding, Ernest

Steinauer, David LaFleur, Joseph

Topham, Maureen Phillips, Seth

ATTORNEY: Glenn Wood

ADDRESS: Rubin and Rudman LLP

53 State Street, 15th Floor

Boston, MA 02109

ADDRESS: Englebourg, as members of the

Nantucket Conservation Commission,

2 Bathing Beach Road

CITY: Nantucket, MA 02443

CODE NO.

AEL

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

TYPE OF ACTION (specify)

Administrative Action

TRACK

A

HAS A JURY CLAIM BEEN MADE?

☐ YES☒ NO

"If Other" please describe:

Is there a claim under G.L. c. 93A?

☐ YES☒ NO

Is this a class action under Mass. R. Civ. P. 23?

☐ YES☒ NO

## STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

## TORT CLAIMS

(attach additional sheets as necessary)

## A. Documented medical expenses to date:

1. Total hospital expenses

2. Total doctor expenses

3. Total chiropractic expenses

4. Total physical therapy expenses

5. Total other expenses (describe below)

\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
Subtotal (A): \$ \_\_\_\_\_

FILED

JUL 10 2019

NANTUCKET SUPERIOR COURT CLERK

## B. Documented lost wages and compensation to date

## C. Documented property damages to date

## D. Reasonably anticipated future medical and hospital expenses

## E. Reasonably anticipated lost wages

## F. Other documented items of damages (describe below)

\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

## G. Briefly describe plaintiff's injury, including the nature and extent of injury:

N/A

TOTAL (A-F): \$ \_\_\_\_\_

## CONTRACT CLAIMS

(attach additional sheets as necessary)

☐ This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement, Mass. R. Civ. P. 8.1(a).

Provide a detailed description of claim(s):

TOTAL: \$ \_\_\_\_\_

Signature of Attorney/ Unrepresented Plaintiff: X

Date:

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

None

## CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X

Glenn Wood (MAY)

Date: 7/9/19